Buckeye Cotton Oil Co. v. State, 60 So. (Miss., 1913) 775:

Smith, C. J.: This is an appeal from a conviction for the violation of chapter 157 of the Laws of 1912. The prosecution was begun by an affidavit lodged with a justice of the peace which contained five counts, each count alleging the working by appellant of a separate employe for more than 10 hours on the day named. The name of the employe in the first count was Floyd Ford; in the second, Will Smith; in the third, Sol Brown; in the fourth, Warren Graham; and in the fifth, A. M. Henry. The case was submitted to the judge at circuit for decision by him, without a jury, upon an agreed statement of facts, in which it was agreed: That appellant was a corporation operating a cotton seed oil mill, setting out the manner in which the cotton seed were by it separated into their component parts, to-wit, hulls, linters, cake, and crude cotton seed oils, and prepared for use. That on the day named in the affidavit it worked the employes named in the affidavit, all of whom were adults, for more than 11 hours. That Floyd Ford was a meal cook, whose duties consisted of supervising the employes in cooking the meal, seeing that it was properly cooked, that all machines were kept in running order, and, in the event of a breakdown, report the same to the superintendent. That Will Smith was a panman, or pan shoveler, whose duties as such were to take the cooked meal after it was formed from the former and load it in the press. It would take the said Will Smith about 14 minutes to load the presses. There was then an intermission of 10 minutes before the next loading began, and at the end of one hour he was off one hour, at the end of which time he took up the same duties again, actually working every other hour, with an intermission of ten minutes between each charge of loading. That, while this employe was on duty more than 10 hours, in fact about 11 hours, he was engaged in actual manual labor not exceeding six hours." That Sol Brown was a seed

feeder, whose duty as such was "to feed the cotton seed from the bins into the tunnel conveyer," "by which they are carried, by means of a screw, automatically into a sand and boll screen room." That Warren Green was a fireman, whose duty it was "to keep steam at sufficient pressure by feeding fuel into the furnace." That A. M. Henry was superintendent of the plant, charged with "the general supervision of the operations of said mill." That this mill is in operation for only about five months in each year, none of the employes except Henry being employed therein except during the months the mill is in operation, Henry being employed for the year. That "the work in which these employes were engaged in no manner impairs their health, physical condition or moral nature, or that of the public," but on the contrary, the extraction of oil from cotton seed "is a very healthful occupation, tends to build up the vitality of the system, and this is especially true where any laborer has any tendency to tuberculosis. That employment at a mill of this kind benefits them." That in discharging their duties these employes were not subjected to "noxious, injurious, or damaging odors, gases, dusts, noises," etc., and that there is connected with their employment "no unusual heat, and no complicated or dangerous machinery," but, on the contrary, the rooms in which they worked were thoroughly ventilated, and in a comfortable and cleanly condition. The court adjudged appellant guilty on each count in the affidavit, and entered a fine against it "of $10 for each offense, making a total of $50."

(1) We have again, at the request of counsel, taken up the constitutionality of this statute for consideration, and see no reason for receding from the views expressed by us in *State v. Newman Lumber Co.*, 59 South., 923, and 60 South., 216.

Appellant contends, however, that the agreed statement of facts does not bring it within the terms of this statute, first, because the statute was not

intended to apply to cotton seed oil mills; and, second, because the employes worked by it for more than 10 hours are not of the class of employes contemplated by the statute.

(2) It will be observed that the business in which appellant was engaged is that of separating cotton seed into its component parts, giving to those parts new forms, and rendering them suitable for new uses. In the *Newman Lumber Company* case, *supra*, we held that a person is engaged in manufacturing, within the meaning of this statute, when he is engaged in the production of articles for use from raw or prepared materials by giving to such materials new forms, qualities, properties, or combinations by means of an organized force of laborers working with machinery. From this it clearly appears that appellant is engaged in manufacturing.

(3, 4). In order for appellant to be guilty, it must not only be engaged in manufacturing, but the employes alleged to have been worked by it overtime must be of the class protected by the statute. In the *Newman Lumber Company* case we held that all possible employes of a manufacturing establishment are not within the protection of the statute; but it necessarily follows from the construction there put upon the statute that all the employes who compose the organized force and work with machinery, whose work supplements that of the machinery, and must be performed while it is, and in order that it may be kept, in operation, are within its protection. The Legislature clearly intended to protect the employe who is confined to the precincts of the manufacturing establishment, and who is practically held in bondage by the machine with, or in connection with, which his work is performed, making it compulsory upon him to answer all of its motions with corresponding action. Appellant's employes, Ford, Brown, and Green are therefore within the protection of the statute, and appellant violated it in working them for more than 10 hours in one day.

(5) It is impossible for us to definitely determine, however, from the agreed statement of facts whether Will Smith was worked overtime or not. If he was on duty for only one hour at a time and then off for an hour, and not then confined to the precincts of the establishment, charged with some responsibility for the operation of the machinery, he was at work less than 10 hours; but if, in fact, he was on duty all the time, charged with keeping the machinery with which he worked in the continuous performance of its functions, he was, of course, at work all the while, and therefore for more than 10 hours; and in that event it is immaterial that he may have had at times practically nothing to do.

(6) It is also impossible for us to determine from the agreed statement of facts whether the employe Henry is of the class protected by the statute, as we are not thereby sufficiently advised of the character of the work performed by him. His having "general supervision of the operations of said mill" may, or may not confine him to the precincts of the mill, and charge him with the duty of supervising employes while at work and the machinery while in operation.

(7, 8) That the mill was operated only about five months in each year, during which time it was kept in perfect sanitary condition and that work therein "tends to build up the vitality of the system" is immaterial. The statute protects all employes in a designated class without reference to the sanitary or unsanitary condition of the establishment in which their work is performed. The injurious consequences from which they are protected are such as result from overwork of a certain character, and not such as result from unsanitary surroundings. That it appears from the agreed statement of facts "that the work in which these employes were engaged in no manner impairs their health, physical condition or moral nature, or that of the public," is also immaterial, for the experience of mankind has demonstrated that the contrary is the fact, when it is performed daily

for many consecutive hours. Moreover, the statute operates on all employes of a designated class, without reference to whether in a particular case the overwork will, or will not, result in detriment to the physical and mental welfare of the workman.

(9) The court committed no error in finding appellant guilty as charged, but it erred in holding that each count in the affidavit charged a separate offense and in imposing sentence accordingly. The statute simply groups the employes of a manufacturing establishment, and makes the working of all, or any of them, for more than 10 hours in one day an offense. Had the Legislature desired the working of each employe to constitute a separate offense, it could easily have used language so indicative, as was done by it in other laws passed at the same session at which the one now under consideration was passed, particularly chapter 165, Laws 1912, by which the employment of children in mills is regulated.

The judgment of the Court below is affirmed, and will remain in full force and effect, in so far as it adjudges appellant guilty of one violation of the statute; but, in so far as it adjudges appellant guilty of more than one violation of the statute and imposes sentence accordingly, it is reversed and remanded for proper sentence.

Office Supreme Court, U. S.
FILED.
JAN 20 1913
JAMES H. McKENNEY,
CLERK.

No. [redacted]79

—IN THE—

Supreme Court of the United States

OCTOBER TERM, 1912.

G. W. WATHEN

vs.

JACKSON OIL & REFINING COMPANY, et al.

BRIEF FOR

Ross A. Collins, Attorney-General of Mississippi; Frank Johnston, Assistant Attorney General; George H. Ethridge, Assistant Attorney General; J. H. Howie, District Attorney; and O. B. Taylor, County Prosecuting Attorney, Appellees.

ROSS A. COLLINS,
Attorney General of Mississippi.

FRANK JOHNSTON,
Assistant Attorney General of Mississippi.

TUCKER PRINTING HOUSE JACKSON MISS

In the Supreme Court of the United States

OCTOBER TERM, 1912.

No. 891.

G. W. WATHEN

vs.

THE JACKSON OIL & REFINING COMPANY, THE ATTORNEY GENERAL OF MISSISSIPPI, ET AL.

BRIEF FOR ROSS A. COLLINS, ATTORNEY GENERAL; FRANK JOHNSTON, FIRST ASSISTANT ATTORNEY GENERAL; GEORGE H. ETHRIDGE, SECOND ASSISTANT ATTORNEY GENERAL; J. H. HOWIE, DISTRICT ATTORNEY; AND O. B. TAYLOR, COUNTY PROSECUTING ATTORNEY, APPELLEES.

Statement of the Case.

On the 30th day of November, 1912, the appellant, G. W. Wathen, a stockholder in the Jackson Oil and Refining Company, filed this bill in the United States District for the Southern District of Mississippi, Jackson Division, against the following defendants, viz.:

Ross A. Collins, Attorney General of Mississippi; Frank Johnston, Assistant Attorney General of Mississippi; George H. Ethridge, Assistant Attorney General of Mississippi; J. H. Howie, District Attorney of the Seventh Circuit Court District of Mississippi; O. B. Taylor, County Prosecuting Attorney of Hinds County; the Jackson Oil and Refining Company and W. B. Gowdy, Manager of the Jackson Oil and Refining Company.

The complainant is a citizen of the State of New York. The Jackson Oil and Refining Company is

an incorporated company duly incorporated by the State of New Jersey, and doing business at Jackson, in the State of Mississippi. All of the other defendants in the cause are citizens of the State of Mississippi.

The complainant avers in his bill substantially as follows:

That the Jackson Oil and Refining Company is engaged in the manufacture and refining of cotton-seed oil in the city of Jackson, State of Mississippi, and that as such it is carrying on a large and extensive business with a capital stock of the par value of $100,000 in shares of $100 each; that complainant owns 502 shares of said stock, of the par value of $50,200, and of an actual value of $60,000.

The company works two shifts of operators or employees—for each twenty-four hours, each shift being on duty for twelve hours, with one hour off duty for each shift. That the business of the company is such that the concern must be thus run continuously day and night, according to the requirements of a business of this character.

All of said employees are adults, and capable of contracting intelligently with the Jackson Oil and Refining Company for their labor. All of the employees of said company, except those operating its machinery, work in the open air or in the office buildings of the company, in loading and unloading and handling the cottonseed and the products of the concern, which are cotton-seed meal, cotton-seed oil, and other cotton-seed products. All of the employees who are engaged in the operation of the machinery work in large, commodious and well ventilated buildings.

The averment is also made in the bill, that the employees of said company are not required to do any work that is injurious to their moral, mental or physical welfare, and that none of them actually work over eleven hours per day.

That the Act of the Mississippi Legislature of March 16th, 1912, limiting the hours of labor in manufacturing establishments in the State to ten hours a day, if applied to the business of this company would

seriously injure its business and would force the company into a state of insolvency or bankruptcy.

The statute of Mississippi is set out in full in the bill.

W. B. Gowdy, the Manager of the Company, being apprehensive of incurring for the company the penalties prescribed by this statute, is operating the business in compliance with said statute, but at great loss and inconvenience to the company.

The complainant avers in his bill, that this statute of Mississippi is in violation of the Fourteenth Amendment to the Federal Constitution, in the following alleged particulars, viz.:

(*a*) The statute denies to the said company the right to contract for the labor of its employees, and to the employees the right to contract for their labor with the company.

(*b*) It denies to individuals and corporations in manufacturing, the right to employ their employees for more than ten hours per day, when persons and corporations not engaged in manufacturing may work their employees in the same kind of work for any period of time, thereby making an arbitrary classification.

(*c*) It denies to this company, without due process of law, the right to contract with its employees for their labor, for the sole reason that it is a manufacturing corporation, and compels it to employ a large and unnecessary force of employees at a large and unreasonable expense, and at a loss to the complainant and the other stockholders.

(*d*) The statute violates the contract guaranty provision of the Federal Constitution, in that it impairs the obligation of contracts between the company and its employees.

The following objection is also made to the statute, viz.:

That the penalty of $50.00, a day for a violation of the statute is so severe that the officers of the company, in apprehension of incurring such penalty for the company, are obeying said statute, and will con-

tinue to do so unless restrained by the process of the Court.

The bill further avers that unless an injunction is granted restraining the execution of this statute, there will be a great multiplicity of suits, and the accumulation of a consequent large amounts of costs and penalties.

The prayer of the bill is, that an injunction issue restraining the State Officials from executing said statute, and on final hearing that the injunction be made perpetual.

The Demurrer to the Bill.

The defendants, Ross A. Collins, Attorney General; Frank Johnston, Assistant Attorney General; and George H. Ethridge, Assistant Attorney General; J. H. Howie, District Attorney, and O. B. Taylor, County Prosecuting Attorney, filed a demurrer to the bill, setting up the following as grounds of demurrer:

1st. The complainant, as a stockholder of the Jackson Oil and Refining Company, on the facts stated in the bill, has no right to bring or maintain this suit.

2nd. The complainant has no interest in the subject matter of the suit which are adverse to the Jackson Oil and Refining Company. Their interests are identical, and, therefore, this does not come within the class of cases which a stockholder may bring.

3rd. This complainant cannot maintain a bill in equity to enjoin the officials of the State from enforcing the criminal laws of the State.

4th. While the bill is in form against these defendants as individuals, it is in fact a proceeding to enjoin the State of Mississippi from the enforcement and administration of one of its general and public criminal statutes, and as such is beyond the jurisdiction of any Court, State or Federal.

5th. The bill is prematurely brought, and rests upon a mere apprehension of the complainant, in view

of the fact that no proceedings whatever have been taken by any of these defendants against said company.

6th. This suit is in substance and effect one to enjoin the administration of the criminal jurisprudence of Mississippi, a sovereign State, and, as such, is beyond the jurisdiction of this Court.

By a clerical oversight, or mistake, the following ground was omitted from the demurrer, and which was afterwards added to the demurrer by the written agreement of counsel, viz.:

The Act of the Legislature of Mississippi of March 16, 1912, *regulating the hours of labor in manufacturing establishments is valid and constitutional.*

The State Court Decisions.

The bill avers that this statute has been held to be constitutional and valid in the recent case of the *Newman Lumber Company vs. The State of Mississippi;* the full text of the opinion of the Supreme Court of the State, delivered by Judge Reed, is filed as Exhibit "A" to the bill, in this cause, and is as follows, as published in *The Southern Reporter*, advance sheets of December 21st, 1912:

"STATE v. J. J. NEWMAN LUMBER CO.

(No 16,055.)

(Supreme Court of Mississippi. Nov. 18, 1912.)

1. *Constitutional Law* (§ 81)—*Health* (§ 20)—*Police Power.*

"The Legislature, vested by Const. 1890, art. 4, § 33, with legislative power, may enact laws regulating and providing for the safety, health, morals, and general welfare of the public, within the exercise of the police power.

(Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. § 148. Dec. Dig. Sec. 81; Health, Cent. Dig. Sec. 24; Dec. Dig. § 20.)

"2. *Constitutional Law* (§ 70*)—*Police Power—Function of Courts.*

"The Legislature must decide what laws are necessary within the police power, and it is not for the

Court to decide whether a law is needed or advisable in the general government of the people.

(Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 129-132, 137; Dec. Dig. § 70.)

3. *Constitutional Law* (§ 212)—*Police Power—Restrictions.*

"The Fourteenth Amendment does not prevent a state from making proper regulations within the police power for the promotion of the health, peace, morals, education, and good order of the people; but a state may not unnecessarily interfere with a person in the exercise of his inherent rights.

(Ed. Note.—For other cases see Constitutional Law, Cent. Dig. §§ 684, 705; Dec. Dig. § 212.)

"4. *Statutes* (§ 47)—*Construction—Certainty—'Manufacturing'—'Repairing—'Manufacture.*

"Laws 1912, c. 157, prohibiting any person, firm, or corporation, engaged 'in manufacturing or repairing,' to work employees more than 10 hours per day is sufficiently definite; for 'manufacturing' is the system of industry which produces manufactured articles, and 'manufacture' is the production of articles for use from raw or prepared materials, by giving them new forms, qualities, and properties, or combinations, and 'repairing' is the making or restoring of an article or thing to its completeness.

(Ed. Note.—For other cases, see Statutes, Cent. Dig. § 47; Dec. Dig. § 47.

For other deifnitions, see Words and Phrases, vol. 5., pp. 4344-4346; vol. 8, p. 7716; vol. 7, pp. 6096-6112; vol. 8, p. 7785.)

"5. *Constitutional Law* (§ 89)—*Police Power—Restraints on Freedom of Contract.*

"A statute within the police power for the welfare of the classes affected and for the best interests of the whole people, is not invalid, as the impairing the freedom of contract, which is siubject to the lmita-

tions which a state may impose in the exercise of its police power.

(Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. § 157; Dec. Dig. § 89.)

"6. *Constitutional Law* (§ 81*)—*Police Power—Restraint of Freedom of Contract.*

"Regulations of lawful trade or business are within the exercise of the police power, and, unless they are so unreasonable that the property and personal rights of the citizens are unnecessarily and arbitrarily interfered with or destroyed, they do not extend beyond the pwer of the state to adopt.

(Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. § 148; Dec. Dig. § 81.)

"7. *Master and Servant* (§ 13)—*Regulation of Hours of Employment—Statutes—Validity.*

"Laws 1912, c. 157, prohibiting any person, firm, or corporation, engaged in manufacturing or repairing, to work employes more than 10 hours per day, except in cases of emergency, or where public necessity requires, is enacted for the welfare of the people, to promote the health, morals, and good order of the people affected, and is a valid exercise of the police power.

(Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 14; Dec. Dig. § 13.)

"Appeal from Circuit Court, Lamar County, A. E. Weathersby, Judge.

"The J. J. Newman Company Lumber was indicted for working an employe more than 10 hours per day. From a judgment sustaining a demurrer to the indictment, the State appeals. Reversed and remanded.

"Frank Johnston, Assistant Attorney General for the State. S. E. Travis, of Hattiesburg, for appellee.

"*Reed, J.* The indictment in this case alleges that the appellee is a corporation, organized under the laws of this State; that it owned, controlled, and operated a saw and planing mill plant, and logging

railroad in connection therewith, and was engaged in the manufacture of lumber and the repairing of its machinery used in and about its plant and railroad; and charges that it worked one of its employes more than 10 hours per day, not in a case of emergency or where public necessity required, contrary to chapter 157 of the Laws of Mississippi of 1912. There are nine counts in the indictment, each being a charge for working an employe in the different departments of appellee's manufacturing enterprise. Counsel for appellee in his brief states that no point is made as to the form of the indictment. Appellee filed a demurrer to the indictment, which was sustained, and from which the State prosecutes the present appeal.

"Chapter 157 of the Laws of Mississippi:

'*Employes not to be worked over ten hours in certain cases.*

"SECTION 1. Be it enacted by the Legislature of the State of Mississippi, that it shall be unlawful for any person, firm or corporation engaged in manufacturing or repairing to work their employes more than ten hours per day, except in cases of emergency, or where public necessity requires in such departments.

"SEC. 2. That any person, firm, or corporation, violating this Act shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten nor more than fifty dollars for each offense, and each day's violation shall constitute a separate offense.'

"While there are seventeen grounds set out in the demurrer, yet they all may be considered in the question of the constitutionality of the law. In order to see fully appellee's contention that the law is violative of our national and State Constitutions, we quote the second ground of demurrer, which is as follows:

" 'It appears from the face of said indictment that it is based on chapter 157, Laws of Mississippi of 1912, which Act is discriminatory, unconstitutional,

invalid, and void, and the said indictment is insufficient in law for the following reasons:

"(*a*) It is violative of section 14, Constitution of Mississippi of 1890, because it deprives said defendant, and those sought to be made liable thereunder, of liberty and property without due process of law.

"(*b*) It is violative of section 16 of said Mississippi Constitution, because it impairs the obligation of contracts between the said defendant, as employer, and its said employes, as well as of contracts between all employers and employes embraced within its terms.

"(*c*) It is violative of section 24 of said Mississippi Constitution, because its provisions operate injuriously to the person and property of said defendant and others sought to be made liable thereunder, and deny to said defendant and such others 'remedy by due course of law,' and the 'right and justice' guaranteed by said constitutional provision.

"(*d*) It is violative of section 10, art. 1, of the Constitution of the United States, prohibiting any state from passing a 'law impairing the obligation of contracts,' because it impairs the obligation of the contracts alleged to have existed between the said defendant and its said employes.

"(*e*) It is violative of section 1 of the fourteenth amendment to the Constitution of the United States in three particulars: (1) It abridges the privileges and immunities of the said defendant, a citizen of the United States. (2) It deprives the said defendant of liberty and property without due process of law. And (3) it denies to the said defendant, a citizen of the said state of Mississippi and of the United States, 'the equal protection of the laws.'

"(*f*) It is violative of that portion of section 2, art. 6, of the Constitution of the United States, which makes that instrument and the laws made in pursuance thereof, 'the supreme law of the land,' because it is unreasonable, unjust, arbitrary, and discriminatory, and interferes with the property,

liberty, rights, privileges, and immunities of the said defendant, and others sought to be made liable thereunder, protected by the aforesaid provisions of the Constitution of the United States.'

"It will be seen that a corporation in this state is charged with working the men in its employ for over 10 hours a day—the indictment says for 11 hours—contrary to the statute, which prohibits such extended hours of labor. In defense, the appellee claims that the state had no authority to enact such law, that it was contrary to the limitations of the federal and state constitutions, that the law impairs the obligation of contracts, abridges the privileges and immunities of the citixen, deprives him of liberty and property without due process of law, and denies him the equal protection of the laws, and that the law is unreasonable, unjust, arbitrary, and discriminatory, interferes with the property, liberty, rights, privileges, and immunities of the citizen, and is, therefore, condemned by the Constitution of the United States.

"(1) There has been already in this country much discussion of the laws, like the statute now before us, commonly known as 'labor laws.' It seems to be settled that the legislatures of the states have the power to enact proper laws to regulate and provide for the 'safety, the health, the morals, and the general welfare of the public.' Appellee contends that the Legislature of Mississippi was not within that power when making the regulation that the laborer in manufacturing and repairing plants should not be worked longer than 10 hours per day.

"In considering questions like the present one, it is well for us to look at the organization of our nation. In forming our government, 'of the people, by the people, and for the people,' the individual surrendered many of his personal liberties. This was necessary. We could not have had government otherwise. No society can continue without its members being required to give up some of what

they deem are their personal rights and liberties. We cannot imagine any successful government where every one has the privilege of doing what pleases him. Regulations and rules for the control of conduct accompany as a very necessity every organization. This truth applies, not only to an association of persons, but as well to the individual. Every person who succeeds finds it necessary to control his life by strong rules, sometimes very hard to obey. Recognizing all this, our forefathers, in their wisdom, planned to make the necessary rules for governing the people. They bestowed this power upon certain representatives of the people called legislators. In order to give stability to the statutes to be enacted, a Constitution, consisting of certain fundamental rules and regulations, was ordained and established. The general governing of the people was at the time and has continued in the several states, which together formed the Union known as the United States. Article 10 of the Federal Constitution recognizes this when it states: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.'

"The states, when organizing, ordained and established their Constitutions. In Mississippi, the powers of government were bestowed upon three departments—legislative, judicial, and executive. Section 33, art. 4, of Mississippi's Constitution, clearly announces that 'the legiasltive power of this state shall be vested in the Legislature.' It is declared in section 5, art. 3, of the same Constitution, that 'all political power is vested in, and derived from, the people; all government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.'

"It is, therefore, incumbent upon the Legislature to enact all laws necessary for regulating the conduct of the people and the proper use of their property.

It is often true that persons will deem their liberties abridged, or the unlimited enjoyment of their property interfered with. Since the beginning of government this has been so. It will continue so long as persons decide from a selfish standpoint, and not from a consideration of the welfare of all citizens. It is the duty of the Legislature to consider the interests of all—what is best for society generally. As seen in the foregoing quotation from our State Constitution, it is enjoined upon the lawmakers that 'government is instituted solely for the good of the whole.' They are necessarily the judges of what is for the good of the citizens.

"(2) Seeing that the power to enact necessary and proper laws is granted to the Legislature, and the legislators in the very nature of the case must decide what are such laws, then it is plain that the Courts should be very careful before holding that any law passed touching the welfare of the citizens is not within the limitations of the Constitutions. The duty of the Court is to construe the law and apply it to the case presented, and it may decide that it is contrary to the fundamental laws, which we call our Constitutions. But it is not for the Court to decide whether a law is needed and advisable in the general government of the people. This is being more and more recognized by the Courts in their consideration of questions of constitutionality. In a recent case, *Noble State Bank v. Haskell*, 219 U. S., 104, 31 Sup. Ct., 186, 32 L. R. A. (N. S.) 1062, Ann. Cas. 1912A, 487, the United States Supreme Court, speaking through Mr. Justice Holmes, said: 'In answering that question, we must be cautious about pressing the broad words of the fourteenth amendment to a dryly logical extreme. Many laws which it would be vain to ask the Court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guaranties in the Bill of Rights. They more or less limit the liberty of the individual, or they diminish

property to a certain extent. We have few scientifically certain criteria of legislation, and, as it often is difficult to mark the line where what is called the police power of the states is limited by the Constitution of the United States, judges should be slow to read into the latter a *nolumus mutare* as against the lawmaking power.'

"It is certainly true that the power of the state to enact laws for the government of its people, which is usually called the police power of the state, extends at least to the lives, the health, the general welfare and safety of the public, and against the wrongful or injurious exercise by any citizen of what he may deem his rights. The Supreme Court of the United States has 'with marked distinctness and uniformity recognized the necessity growing out of the fundamental conditions of civil society of upholding state police regulations which were enacted in good faith, and had appropriate and direct connection with that protection to life, health, and property which each state owes to her citizens.' *Patterson v. Kentucky*, 97 U. S., 501, 24 L. Ed., 1115.

"(3) It was not the purpose of the fourteenth amendment to prevent in any manner the state from making the proper regulations for the promotion of the health, peace, morals, education, and good order of the people. *Barbier v. Connolly*, 113 U. S., 27, 5 Sup. Ct. 357, 28 L. Ed., 923. Of course, the state cannot by its laws unduly and unnecessarily interfere with a person in the exercise of his inherent rights or the unlimited control and use of his property. At the same time it must be borne in mind that the rights of an individual must at all times be subordinate to the welfare and best interests of society.

"(4) The law of this State now under discussion makes it unlawful for any employer in a certain class to work employes more than 10 hours per day, except in cases of emergency or where public necessity requires. The Legislature, in enacting

this law, decided that it was a regulation needed among the class of the citizens mentioned, that it was for their best welfare, and that the interests of the public required the law.

"It is contended by appellee that the definition of those in the class mentioned in the law is too general, and that it is difficult to limit those who may be engaged in manufacturing or repairing. It does not seem to have been difficult in the instant case. The indictment charges that the men employed were at work in different departments of appellee's manufacturing plant, and that appellee was operating such a manufacturing enterprise, and was also engaged in the work of repairing all kinds of engines, boilers, locomotives, cars, and machinery used in and about the mill plant and the logging railroad. It will be seen, therefore, that appellee's enterprise included both manufacturing and repairing in its work. A reasonable definition may be given to 'manufacturing' (Century dictionary) as the system of industry which produces manufactured articles, and to 'manufacture' as the production of articles for use from raw or prepared materials, by giving to these materials new forms, qualities, and properties, or combinations, whether by hand labor or machinery, used more especially of production in a large way by machinery, or many hands working co-operatively. 'Repair' is to make whole or restore an article or thing to its completeness. In the general knowledge of the affairs of business and life, it will hardly be difficult to class those persons who are engaged in such employment.

"It is proper to say that in the early history of the State such persons, because of the very small amount of manufacturing business carried on, were few in number, the large body of the citizens then following agriculture; but in recent years, on account of the rapid increase in manufacturing enterprises in this State, the same class of persons have grown to a great number, and there is every reason to believe that their number will steadily

increase. It is not improper to conclude that the Legislature had all this in mind when the law was enacted, and decided that it would affect many of the future citizens of Mississippi.

"(5) If it is true that the enactment of this law is for the welfare of the classes affected, and for the best interests of the whole people, then even appellee's right to contract with the laborers named must be subject to the restraints demanded by the safety and welfare of the State. *Knoxville Iron Co. v. Harbison*, 183 U. S., 13, 22 Sup. Ct. 1, 46 L. Ed., 55.

"(6, 7) The controlling question in this case is whether the law before us is for the welfare of the people, and whether it will promote the health, morals, and good order of the people affected; in other words, whether it will be a benefit to them.

"It is said in the case of *Gundling v. Chicago*, 177 U. S., 183, 20 Sup. Ct. 633, 44 L. Ed., 725, that 'regulations respecting the pursuit of a lawful trade or business are of very frequent occurrence in the various cities of the country, and what such regulations shall be, and to what particular trade, business, or occupation they shall apply, are questions for the State to determine, and their determination comes within the proper exercise of the police power by the State, and, unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizens are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the State to pass, and they form no subject for Federal interference.'

"In the case of *Holden v. Hardy*, 169 U. S., 366, 18 Sup. Ct., 383, 42 L. Ed., 780, it is decided that 'the protection of the health and morals, as well as of the lives, of citizens, is within the police power of the State Legislature.' In that case the act of the Legislature of Utah, passed in 1896 (Laws 1896, c. 72), regulating the hours of employment

in underground mines, was attacked. Section 1 of that act reads: 'The period of employment of workingmen in all underground mines or workings shall be eight hours per day, except in cases of emergency, where life or property is in imminent danger.' This statute was upheld by the Supreme Court. The objections made in that case were practically the same as those made by appellee in the case before us; that is, on the ground of abridging their immunities, depriving them of their property, and denying them the protection of the laws. The Court therein considered the objections together, just as we are doing in the instant case. Mr. Justice Brown, in delivering the opinion of the Court, discusses the progress in our laws and the necessity for changes as new conditions arose, and referring to these he said: 'They are mentioned only for the purpose of calling attention to the probability that other changes of no less importance may be made in the future, and that, while the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuation, and that the Constitution of the United States, which is necessarily and to a large extent flexible and exceedingly difficult of amendment, should not be so construed as to deprive the states of the power to so amend their laws as to make them conform to the wishes of the citizens, as they may deem best for the public welfare, without bringing them into conflict with the supreme law of the land.'

"It is also well known that in the progress of society the relations between employer and employe have changed. Such law as that before us in the instant case may not have been needed half a century ago, but may be needed at the present time. In fact, the Department of the government of this State, known as the Legislature, has decided that the law is needed.

"Under the subject of impairing the obligation of contracts, Mr. Justice Brown, in *Holden v. Hardy, supra*, said: 'This right of contract, how-

ever, is itself subject to certain limitations, which the State may lawfully impose in the exercise of its police powers. While this power is inherent in all governments, it has doubtless been greatly expanded in its application during the past century, owing to an enormous increase in the number of occupations which are dangerous, or so far detrimental to the health of employes as to demand special precaution for their well-being and protection, or the safety of adjacent property.' And in *Commonwealth v. Alger*, 7 Cush. (Mass.) 84, it is said: 'We think it a settled principle, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. * * * Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as will prevent them from being injurious, and to such reasonable restraints and regulations established by law as the Legislature, under the governing and controlling power vested in them by the Constitution, may think necessary and expedient.'

"Counsel for appellee in his brief contends that the instant case is controlled by the case of *Lochner v. New York*, 198 U. S., 46, 25 Sup. Ct., 539, 49 L. Ed., 937, 3 Ann. Cas. 1133. In that case it was decided that the limitation of employment in bakeries to 60 hours a week, and 10 hours a day, under the New York law of 1897, is an arbitrary interference with the freedom to contract guaranteed by the United States Constitution, fourteenth amendment, which cannot be sustained as a valid exercise of the police power to protect the public heatlh, safety, and morals, or general welfare. A careful coonsideration of that case fails to show us that it should control the case before us.

It seems that the statute omitted the exception in the Mississippi statute, which is in the following words: 'Except in cases of emergency, or where public necessity requires.' It will be noted that in the case of *Holden v. Hardy, supra*, the Utah statute contained this exception. Mr. Justice Peckham, in *Lochner v. New York*, states that 'the mandate of the statute that no employe shall be required or permitted to work is the substantial equivalent of an enactment that no employe shall contract or agree to work more than 10 hours per day, and, *as there is no provision for special emergencies*, the statute is mandatory in all cases.' And in another portion of the decision, in referring to the Utah statute above mentioned, he said: 'It will be observed that even with regard to that class of labor the Utah statute provided the cases of emergency wherein the provisions of the statute would not apply. The statute now before this Court has no emergency clause in it, and, if the statute is valid, there are no circumstances and no emergencies under which the slightest violation of the provisions of the act would be innocent.' It will be noticed, also, that the decision in *Lochner v. New York, supra*, was not unanimous; four of the distinguished members of the Bench, Mr. Justice Harlan, Mr. Justice White, the present eminent Chief Justice, Mr. Justice Day, and Mr. Justice Holmes dissenting. Both Mr. Justice Harlan and Mr. Justice Holmes wrote dissenting opinions.

"Mr. Justice Harlan, in his dissenting opinion, said: 'Granting then, that there is a liberty of contract which cannot be violated, even under the sanction of direct legislative enactment, but assuming, as according to settled law we may assume, that such liberty of contract is subject to such regulations as the State may reasonably prescribe for the common good and the well-being of society, what are the conditions under which the judiciary may declare such regulations to be in excess of legislative authority and void? Upon this point there is no room for dispute; for the rule is uni-

versal that a legislative enactment, Federal or State, is never to be disregarded or held invalid, unless it be, beyond question, plainly and palpably in excess of legislative power. * * * It is plain that this statute was enacted to protect the physical well-being of those who work in bakery and confectionery establishments. It may be that the statute had its origin, in part, in the belief that employers and employes in such establishments were not upon an equal footing, and that the necessities of the latter often compelled them to submit to such exactions as unduly taxed their strength. Be this as it may, the statute must be taken as expressing the belief of the people of New York that, as a general rule, and in the case of the average man, labor in excess of 60 hours during a week in such establishments may endanger the health of those who thus labor. Whether or not this be wise legislation, it is not the province of the Court to inquire. Under our systems of government, the Courts are not concerned with the wisdom or policy of legislation. So that, in determining the question of power to interfere with liberty of contract, the Court may inquire whether the means devised by the State are germane to an end which may be lawfully accomplished and have a real or substantial relation to the protection of health, as involved in the daily work of the persons, male and female, engaged in bakery and confectionery establishments. * * * I take leave to say that the New York statute, in the particulars here involved, cannot be held to be in conflict with the fourteenth amendment, without enlarging the scope of the amendment far beyond its original purpose, and without bringing under the supervision of this Court matters which have been supposed to belong exclusively to the legislative departments of the several states, when exerting their conceded power to guard the health and safety of their citizens by such regulations as they in their wisdom deem best. Health laws of every description constitute, said Chief Justice Marshall, a part of that mass of

legislation which 'embraces everything within the territory of a state, not surrendered to the General Government, all which can be most advantageously exercised by the states themselves.'

"Mr. Justice Holmes, in his dissenting opinion, said: 'This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this Court that State Constitutions and State Laws may regulate life in many ways which we as legislators might think as injudicious, or, if you like, as tyrannical, as this, and which, equally with this, interfere with the liberty to contract. Sunday laws and usury laws are ancient examples. A more modern one is the prohibition of lotteries. The liberty of a citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well-known writers, is interfered with by school laws, by the post offiice, by every state or municipal institution, which takes his money for purposes thought desirable, whether he likes it or not.'

"In discussing the obligation of contracts, this Court said, in the case of *Mississippi Society v. Musgrove*, 44 Miss., 836, 7 Am. Rep., 723: 'Individuals must be considered as making their contracts and covenants subject to the contingent right in the state (within the just application of the principles) of partial impairment or total abrogation of their contracts.'

"In the case of *Moore v. State*, 48 Miss., 147, 12 Am. Rep., 367, wherein it was decided that the law prohibiting lotteries in the state was constitutional under the general subject of the police power of the state, Simrall, J., said: 'The legislative authority

rests upon the right, in all these instances, to take care of the health, happiness, morals, and welfare of the community. It is a paramount duty to preserve the public safety. Therefore the tenure by which private property is held, and the uses to which it is devoted, is subordinate to the police authority, and is not affected and embraced by those provisions of the Constitution which confer on Congress the regulation of foreign and interstate commerce, and the inhibition of laws impairing the obligation of contracts. * * * The line which separates the constitutional from the unconstitutional exercise of power on these and many other subjects is dim and shadowy. It is not possible to lay down a general rule of universal application. There is a region where certainty ends and doubt begins. There is no safer rule to guide the judicial mind in all cases of well-founded doubt as to the constitutionality of a law than to refer to the law-making department. To pronounce a law invalid, the judiciary must distinctly perceive and point out its conflict with the organic law.'

"In the case of *Hart v. State*, 87 Miss., 171, 39 South., 523, 112 Am. St. Rep., 437, it was decided that 'a statute is not to be condemned as unconstitutional unless it plainly conflicts with some provision of the fundamental law, and conflicts will not be presumed.' And in a recent case, *Natchez & Southern R. R. Co. v. Crawford*, 99 Miss., 697, 55 South., 596, it is decided that, 'where a statute is fairly susceptible to two constructions, one of which would render it unconstitutional, the Courts will adopt that construction which will render it constitutional. All doubts are resolved in favor of the constitutionality of a statute.'

"In the case of *Bobo v. Y. & M. V. Delta*, 92 Miss., 792, 46 South., 819, it is decided that 'the Supreme Court has no power to pass upon the wisdom or policy of a statute attacked for unconstitutionality.'

"Laws regulating the time when men shall labor are not new. The changed conditions during recent

years in the business and affairs of the people have brought the discussion of such laws and their apparent necessity fresh to the minds of the present day thinker; but if we will look back through the ages we will find such regulations in the laws of the nations. Particularly, we see them in the statutes governing Jehovah's ancient people, Israel. The greatest law-maker, who received his inspiration to prepare the ordinances for the government of his people direct from Jehovah, and whose laws have always been admired and approved, wrote special statutes regulating the time in which the people should work, and regulating the use of their property. Exodus 23: 10, 11, is as follows: 'And six years thou shalt sow thy land, and shalt gather in the increase thereof; but the seventh year thou shalt let it rest and lie fallow, that the poor of thy people may eat; and what they leave the beast of the field shall eat. In like manner thou shalt deal with thy vineyard, and with thy oliveyard.' And notice the provision in Exodus 23: 12, limiting the time in which the laborer shall work: 'Six days thou shalt do thy work, and on the seventh day thou shalt rest, that thine ox and thine ass may have rest, and the son of thy handmaid, and the sojourner, may be refreshed.'

"In the ordinances contained in the Pentateuch, which follow the fundamental law known to us as the Commandments, are many other provisions similar to those above mentioned, and intended to regulate and limit the conduct of the people of Israel. It hardly seems to us to be an unreasonable limitation upon the rights of the people to provide that 10 hours should be enough for a day's work, especially when it is coupled with a proviso, so this time may be exceeded in cases of emergency or when public necessity requires.

"It is well known that, in the work connected with the running of machinery, the operator is subjected to a mental as well as physical strain. In many cases the nearness to machinery makes the work dangerous in case of an overtaxing of the

strength of the worker, or any lessening in his alertness. We can readily understand that all this was in the minds of the Legislature when the law now under discussion was considered. Besides, it would not be unreasonable for the Legislature to decide that it would promote the health, peace, morals, and general welfare of all laborers engaged in the work of manufacturing or repairing if they were not permitted to extend their labor over 10 hours a day, and the Legislature could also decide that the best interests of the people in the state would be promoted by limiting the time of work of this numerous class of its citizenry to the time mentioned. In fact, when we consider the present manner of laboring, the use of machinery, the appliances, requiring intelligence and skill, and the general present day manner of life, which tends to nervousness, it seems to us quite reasonable, and in no way improper, to pass such law so limiting a day's labor.

"Therefore, we cannot agree with the contention of appellee that the act in question is 'an unreasonable, unnecessary, and arbitrary interference with the property, liberty, rights, privileges, and immunities of those engaged in manufacturing or repairing, and their employes.' The Legislature of Mississippi has decided that this is not so, and we abide by their decision.

"The objections to the statute contained in the several other grounds of demurrer, besides those directed to its constitutionality, have been fully answered by us in this opinion, and it will be seen that we do not consider such objections sufficient.

"*Reversed and Remanded.*"

At the time of the filing of the Bill, the case of the *Newman Lumber Company v. The State of Mississippi* was pending in the Supreme Court of Mississippi on an application for a rehearing or reargument, and this fact is stated in the Bill.

Pending the Demurrer to the Bill, the complainant made a motion for a temporary injunction which motion was heard, on notices regularly and duly

given to the defendants in the cause, before Judge Pardee, Judge Shelby and Judge Grubb, in New Orleans, on the 13th day of December, 1912.

On the 13th day of December, 1912, those Judges made an order denying the motion of the complainant for a temporary injunction, and from that order the complainant has prosecuted the present appeal.

In concluding this statement of the case, we will state that since the order was made denying the complainant's motion for an injunction, the Supreme Court of the State directed a reargument of the *Newman Lumber Company Case*, and upon the reargument, the Court reaffirmed its original decision and the views expressed in its former opinion.

The following is the full text of the opinion of the Supreme Court of the State, delivered by Judge Cook upon the reargument in the *case of the Newman Lumber Company*:

The Opinion of the State Court on the Reargument.

"At a former day of this term this case was affirmed, the Court being of opinion that chapter 157, of the Laws of 1912, entitled, 'An Act to prohibit persons, firms, or corporations engaged in manufacturing or repairing, from working their employes more than ten hours per day, except in cases of emergency, or where the public necessity requires, and fixing the penalty for such violation,' is not invalid, so far as the same may apply to appellant's appeal.

"The question is again before us upon the suggestion that the Court erred in its former opinion, and it is earnestly contended that the statute under review is unconstitutional and void. The original briefs in the case were complete, both in citation of authorities and in dexterous and adroit argument of the principles of law then and now insisted upon as determinative of the case in favor of appellant's view of the law.

"It follows, necessarily, that the oral argument was, in a large measure, but a repetition of what had already been forcibly presented to the Court.

"Many illustrations of the far-reaching effects of the law and the calamitous consequences which will inevitably follow its enforcement have been suggested, but the law, we think, was not intended to reach the numerous forms of manufacture which may be included in the literal definition of the language employed by the Legislature.

"We are not unmindful of the rules laid down for the guidance of Courts in the construction of statutes, but we do not believe the general rules for the construction of the statutes, invoked by counsel, should be used to defeat the purpose of the lawmakers by attributing to them a design to ignore and over-ride the constitutional limitations upon their power to legislate.

"The English language is elastic, and new meanings are frequently given to words not authorized by the literal definition of the words from which they are compounded. Indeed, the common understanding of the signification of words in general use will not bear the test of the scholar's scientific analysis.

"In *Kennington v. Hemmingway*, 57 S. R., 809, this Court said: 'Legislators must be presumed to be reasonable and sane men, "and to intend the natural, direct, and probable consequences of their acts, that these shall not be absurdly or unreasonably construed, and therefore that they intend to avoid absurdities and nonsense" '. * * * Human language is not a perfect vehicle for conveying thoughts, and it frequently happens that words used have a broader or narrower meaning than that intended by the person using them. One of the maxims of the common law, therefore, is '*verba intentioni debent inservire*.' (Words are to be governed by their intention.) As was said by this Court in *Board of Education v. Railroad Co., supra*: "It is familiar learning that, in the construction of

statutes, courts chiefly desire to reach and know the real intention of the framers of the law, and reaching and knowing it, then to adopt that interpretation which will meet the real meaning of the Legislature, though such interpretation may be beyond or within, wider or narrower, than the mere letter of the enactment.'"

"The constant changes in and additions to the definition of words is aptly illustrated by the word 'manufacture'. Dictionaries of latest publication have added new definitions—created by the growth of the language. Referring to Webster's New International Dictionary, 1910, 'manufacture' is thus defined: 'To produce by labor, esp, now according to an organized plan and with division of labor, *and usually with the use of machinery*.'

"We must conclude that the Legislature employed the words of this statute in their usual and most common sense, and when we now speak of manufacturing we *usually* have in mind, an organized force of laborers, working with machinery, to produce from the raw materials the finished product. The broader language of our former opinion is qualified to harmonize with this definition.

"It would be absurd, we think, to construe this statute to apply to the work of laborers engaged in felling timber in the open air in the equable climate of this State, because he is employed by an employer engaged in manufacturing.

"It would be fully as reasonable to suggest that the plowman working in company with a band of agricultural laborers, was covered by the terms of the law, for be it said, if the statute is literally construed, it must be applied to the employers of an organized force of farm hands, and we believe the most radical progressive would hesitate to give the law an application quite so broad.

"Nevertheless, we have authority, and learned authority, for a definition of manufacture, which includes agriculture within its meaning. Mr. Brande in his Encyclopedia, title 'Manufacture' says: 'The

term if generally applied only to those departments of industry in which the raw material is fashioned into desirable articles by art or labor without the aid of the soil, but that there is no real good reason for such limitation, and that it is obvious from the slightest consideration that agriculture is nothing but a manufacture, for the business of the agriculturist is to dispose of the soil, seed, manure, or other materials, that they may supply him with other and more desirable products.'

"To 'stick to the bark' often destroys the purpose of the law, but when we take into consideration the history of the law, the birth and growth of the theories embodied in the statute, and then think in the language of the masses, we have a better understanding of the evils the representatives of the common morality were endeavoring to regulate.

"Thinkers, working to conserve the mental and physical health of toilers in the modern manufactories, have discovered, or think they have discovered, that the concentration of the human mind and muscle, for many consecutive hours, upon the watching and manipulation of rapidly moving machinery, tends to weary the body of the worker, and to weaken his reasoning faculties, and, ultimately, to permanently impair his physical and mental efficiency.

"When the Legislature prohibited employers engaged in manufacturing from employing laborers for more than ten hours, we think, it was the intention to promote the general welfare and protect the workers in that class of manufacture using machinery of a character which requires in its operation constant tension of mind and body. In other words, it was believed that there are manufactories in this State whose operatives could not work longer than ten consecutive hours without impairing their health, and without endangering their lives and their bodies, and yet, competition forced the laborer to take the risk or starve. Believing this, the Legislature, in the exercise of the

police power of the State, enacted the law under review.

"We pause here to remark the notable fact that it is rare for the seller of labor to appeal to the Courts for the preservation of his inalienable rights of labor, this inestimable privilege is generally the object of the buyer's disinterested solicitude. Some day, perhaps, the inalienable right to rest will be the subject of litigation, but as yet this phase of individual liberty has not sought shelter under the State or Federal Constitutions.

"We think there is some confusion in the minds of the Bar and Bench upon the so-called inalienable constitutional right to make contracts—to sell and buy labor—and the lack of legislative authority to limit this right in the interest of the public welfare.

"The liberty to contract is not a fundamental constitutional right. The distinction is clearly stated thus: 'But the liberty of contract, like all other civil liberty, is subject to restraint and regulation on behalf of the public welfare, and to speak of a constitutional liberty of contract without careful qualification is a vague and meaningless phrase. The liberty of contract yields readily to any of the acknowledged purposes of the police power, and it differs from fundamental constitutional rights, from the liberty of the body or person, from the right of property, (including the obligation of existing contracts), from the right of equality, and from political liberty, in that it is neither a vested right, nor a right of definite content, nor a right protected by specific constitutional guaranties. Freund Police Power, section 499, pp. 537.'

"Whether this or that person, or corporation, engaged in manufacturing, comes within the purview of the statute, or whether a particular laborer engaged to work is required to work in manufacturing within the meaning of the law, are questions of fact.

"The limitations imposed upon the employment of labor were, of course, intended to be reasonable

in their application, and to interpret the words used for the accomplishment of this purpose, in their broadest and most comprehensive sense would, to our way of thinking, destroy the law, as well as the intention of its makers.

"Appellee was indicted for a violation of the statute and demurred to the indictment, which demurrer was sustained. The demurrer should have been overruled. Therefore, the suggestion of error is overruled, and the cause is

"*Reversed and Remanded.*"

It is thus seen that the application and operation of the statute is confined upon the construction and interpretation of its meaning placed upon it by the Supreme Court of the State, to manufacturing establishments employing an organized force of employes, operating with machinery to produce from the raw material the finished product. And that the statute does not apply, and has no operation or application to labor ordinarily and generally.

The purpose and contemplation of the Legislature of the State, according to the decision of the Supreme Court of the State, was that the statute should apply in such cases, and only to that extent, to manufacturing concerns employing machinery and labor, as above defined, upon the legislative assumption that such employment operated as a tension upon the mind and body of the operatives, and that such a regulation was designed to promote the general welfare of the operatives engaged in such occupations.

The State Statute.

The full text of the State Statute, chapter 157, of the Acts of the State Legislature of 1912, is as follows:

"CHAPTER 157.

H. B. No. 628.

"An Act to prohibit persons, firms, or corporations engaged in manufacturing or repairing,

from working their employes more than ten hours per day, except in cases of emergency or where public necessity requires and fixing the penalty for such violation.

"EMPLOYES NOT TO BE WORKED OVER TEN HOURS IN CERTAIN CASES.

"SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That it shall be unlawful for any person, firm or corporation engaged in manufacturing or repairing to work their employes more than ten hours per day, except in cases of emergency, or where public necessity requires in such departments.

"PENALTY FOR VIOLATIONS OF THIS ACT.

"SEC. 2. That any person, firm or corporation violating this Act shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten dollars nor more than fifty dollars for each offense, and each day's violation shall constitute a separate offense.

"SEC. 3. That this Act shall take effect and be in force from and after July 12th, 1912.

"Approved March 16th, 1912."

Assignment of Errors.

The assignment of error presents substantially but one ground, and that is, that the Judges erred in denying the motion for the temporary injunction, and should have sustained the motion and granted the writ of injunction.

BRIEF AND ARGUMENT FOR THESE APPELLEES.

The following propositions are submitted to the Court in behalf of these appellees, and they will be presented and discussed in the order in which they are stated.

1ST. *The complainant, a shareholder in the Jackson Oil & Refining Company, has no right to file, or maintain, the bill in this case. The United States Court at Jackson has no jurisdiction of the case.*

2ND. *Section 266, of the Act of March 3rd, 1911, does not extend the jurisdiction of the Federal Courts, but only gives authority for the issuance of injunctions in already pending cases in the mode and manner prescribed in this statute, and where the jurisdiction exists in a Federal Court. And a Court of Equity, neither State nor Federal, has any criminal jurisdiction, and the Federal Court of Equity having no jurisdiction in respect to criminal cases, section 266, of the Act of 1911, does not apply to injunctions in such cases.*

3RD. *The Mississippi statute of 1912, regulating the hours of labor in the State in manufacturing establishments, is valid and constitutional.*

I.

The Complainant as a Shareholder of the Jackson Oil and Refining Company has no Right to Maintain this Bill.

This case in the Federal Court at Jackson stands on a demurrer to the bill in which the whole question of the right of a shareholder to file a bill in equity is presented, as well as the question of the jurisdiction of the Court.

It is a doctrine of equity jurisprudence of universal acceptance, that a shareholder cannot maintain a bill in equity, or any proceeding of a judicial character, in cases where it is competent for the corporation itself to defend, or sue. This is the universal general

rule, and the cases in which a shareholder is permitted to maintain a bill against the corporation, or to defend or sue other persons in lieu of the corporation are exceptional in their character.

In the case of *McDougal v. Gardner*, I Lawyers' Reports, (Chancery Division), 13, in an opinion by Sir William James, one of the ordinary Judges of the Court of Appeals, this whole doctrine was elaborately and clearly presented and the doctrine on this subject clearly defined. It was said in that decision, broadly, that a shareholder cannot go into a Court of Equity in respect to the internal management of the affairs of the corporation, or to control by judicial proceedings the action of the corporate authorities.

It was said that every litigation must be in the name of the company unless in a case of *ultra vires*, or where there is something fraudulent or oppressive done by the company against the stockholders. The reasoning of this learned Judge is clear and conclusive. He points out graphically the inconveniences and confusion that would arise from the undertaking by a Court of Equity to control the internal management and policy of corporations. He said that there are a great variety of things that must be left, necessarily, to the corporation authorities in the way of its corporation policy and of bringing suits and defending suits, and that these matters necessarily must be left to the judgment and discretion of the proper authorities of the corporation.

I quote as follows from the opinion of the Court in that case:

> "There may be claims against directors; there may be claims against officers; there may be claims against debtors; there may be a variety of things which a company could well be entitled to complain of, but which, as a matter of good sense, they do not think it right to make the subject of litigation, and it is the company, as a company, which has to determine whether to make anything that is a wrong to the company a subject matter of litigation, or

whether it will take steps itself to prevent the wrong from being done."

In the case cited, the complaint was the wrongfulness of the majority at a stockholders' meeting to take the action that was complained of as legally injurious to the complainant, and it was a case of this character to which this doctrine of law was applied by the Court.

I Lawyers' Reports (Ch. Div.), 13.

The case just cited followed the former decisions in *Mosley v. Alston*, 4 Phillips, Ch. R., 790; *Lord v. Copper Mines Co., ibid*, 740; *Foss v. Harbottle*, 2 Hal., 461.

The same doctrine was held by the Circuit Court of the District of Columbia in *Biscett v. Kentucky River Navigation Co.*, 15 Fed., 353, and in Note 1, par. 1, in the report of the case, there is a full discussion of the whole subject with a voluminous citation and arrangement of the decisions on this precise subject.

Note 1, *paragraph* 1, 15 Fed., 360.

In the case of *Oglesby v. Attrall*, 105 U. S., 605, the doctrine was thus stated:

"A corporation represents and binds the stockholders in all matters within the limits of its corporate powers, transacted in good faith by its officers and their discretion cannot be controlled by the stockholders."

Oglesby v. Attrall, 105 U. S., 605.

The same doctrine identically was held in the following cases:

Bailey v. R. R. Co., 12 Beav., 433;
Walker v. M. & O. R. R. Co., 34 Miss., 245;
Ellison v. M. & O. R. R. Co., 36 Miss., 572;
Duffee v. R. R. Co., 5 Allen, 242;
High on Extraordinary Legal Remedies, sec. 278;
High on Receivers, secs. 288, 289, 293.

"Among these fundamental powers are those of bringing and defending suits affecting the rights and obligations of the corporation in which it rep-

resents the stockholders as fully as in the making of contracts."

Farnham v. Ballard, 12 Cush. (Mass.), 507.

In the case of *Farnham v. Ballard* (*supra*), in which Chief Justice Shaw delivered the opinion of the Court, which is characterized by very clear and satisfactory reasoning, this doctrine was expressly declared by the Court. We make the following quotation from Judge Shaw's admirable opinion in the case:

"A corporation is a body politic, a person in law, distinct from that of all its members, and may deal with them and sue them, and be sued by them as by other parties."

"If one member, or set of members" (stockholders) "may appear and represent the corporation, any others may do the same; they may make different and inconsistent defences and bind the corporation by their acts and admissions against the will of the majority, legally expressed, and thus lead to confusion and a conflict of rights."

Farnham v. Ballard, 12 Cush., 507 and 509.

Upon this same line of discussion and decision, we call the attention of the Court to the following cases:

Graham v. R. R. Co., 14 Fed. R., 753-762;
Samuels v. Holladay, 1 Wood C. C., 450;
In re Mercantile Discount Co., 1 L. R., (On Equity) 277.

There are a few cases holding the unsound doctrine that a shareholder may sue or defend where the corporation authorities have declined to sue or defend, but they are opposed to the great weight of the authorities, to the *a priori* principle involved, and to the entire reasoning of the subject matter.

"The better considered and later cases limit this right to cases where the directors are guilty of a fraud, or a breach of trust, or a proceeding by them *ultra vires*."

15 *Fed.* R., 361, Note 1.

Among the many cases giving this restrictive definition of the rule or doctrine of equity in respect to shareholders' suits, we cite the following:

Hawks v. Oakland, 104 U. S., 45;
Marsh v. R. R. Co., 40 N. H., 548;
Peabody v. Flint, 6 Allen (Miss.), 52;
Brewer v. Boston Theatre, 104 Mass., 378;
Heirsy v. Vesil, 24 Maine, 9;
Memphis City v. Dran, 8 Wall., 73;
Daneport v. Daws, 18 Wall., 626;
Bacon v. Robertson, 18 How., 48.

In *Oglesby v. Attrall*, 105 U. S., 605, the Court said in a brief opinion that where the action of a corporation is lawful, the motives therefor, or the wisdom or expediency thereof is not a subject of judicial inquiry.

105 U. S., 605.

In the well considered case of *Ellerman v. Railroad Company, and Stock Yard Company*, decided by the New Jersey Chancery Court, 23 Atlantic Reports, 287, it was distinctly held by Vice-Chancellor Green, that no individual stockholders can question, in any judicial proceedings, the corporate acts of the corporation officials if such are in good faith. This learned Chancellor held that questions of management, of expediency and of policy in the administration of the affairs of a corporation must be left solely to the authorities of the corporation.

23 *Atlantic Reports*, 287.

In the case of *Hawks v. Oakland*, 104 U. S., 450, already included in the citation of authorities on this brief, the following fundamental principles governing and defining the rights of shareholders in this respect may be briefly stated as follows, and as announced by the Court in that case:

In order to enable a shareholder to maintain a bill concerning the affairs and management of the business of the corporation, there must be these essentials, *viz*:

1st. Some action, or threatened action, of the directors or trustees which is beyond the authority

of the charter of the corporation or the law under which the company was organized:

2nd. Such fraudulent transactions among themselves (that is, the directors or corporation officials), or with some other party, or with some of the stockholders, as will result in serious injury to the stockholders;

3rd. That the directors are acting for themselves and their own personal interests and against the interests of the stockholders (which would be a fraud against the shareholders);

4th. That a majority of shareholders are oppressively and illegally pursuing a course of policy which is in violation of the rights of the other stockholders, and which can only be properly restrained in a Court of Equity;

5th. It must appear that the complainant in such cases had made an earnest effort to obtain redress at the hands of the directors and stockholders of the corporation.

Hawks v. Oakley, 104 U. S., 450.

Cook, in his Treatise on Stock and Stockholders, vol. 2, section 750, contains a clear statement of this doctrine according to our contention.

In the present case, the proper officials of the Jackson Oil & Refining Company are not acting in any manner fraudulently or oppressively, or illegally, against the interests of the shareholders.

In the exercise of their own judgment and discretion, they are simply not bringing a bill of this character against the State officials and, as appears from the averments in the bill, they are thus acting upon their own judgment as to the expediency of the policy to be pursued in this case.

The action of the corporation authorities in this case is not illegal or *ultra vires*, and this particular objecting shareholder has made no effort whatever to induce the directors or the shareholders of the company to take the course of litigating this question and subject matter with the State authorities. It is

simply a question of judgment and discretion and policy as to what course this corporation or company will take for the benefit of its business and the interest of its shareholders in respect to this character of litigation. There are more considerations than appear superficially that enter into this subject as to the policy to be pursued by the officials of this corporation, which is a foreign corporation doing business in Mississippi by the permission of this State. Without discussing the merits of these considerations, it is sufficient to say that it is simply a question of good judgment and sound discretion as to whether this foreign corporation, doing business permissively in the State of Mississippi, will acquiesce in this law of the State of Mississippi and permit it to be administered through the criminal courts of the State with an ultimate writ of error from the Supreme Court of the United States, or whether they will attempt the extraordinary remedy of enjoining the State officials from enforcing this criminal law of the State of Mississippi. There may be wide differences of opinion on this subject. One stockholder may think that the conservative method of permitting the criminal jurisprudence of Mississippi to proceed in the usual course of procedure uninterruptedly, would be a wise course, while others of a more combative temperament may institute proceedings, as in this case, of a more drastic and intemperate character. In this predicament, it is clear, we respectfully submit to the Honorable Court that such shareholder has no right to maintain this bill.

The attention of the Court is called to the fact that this complainant owns a majority of the stock of the Jackson Oil & Refining Company and can therefore control the policy and management of this corporation, and could compel the officers of the company to initiate judicial proceedings in the name of the corporation to test the validity of the State statute complained of. But the complainant, with this dominating and controlling interest as a shareholder, has not either directed or requested the officers of the com-

pany to take any proceedings in Court to prevent the execution of the State statute.

The corporation is the proper party to bring a proceeding of this character, if such a suit is a proper one in the present instance, and as the complainant is in a position, of a shareholder holding a majority of the stock, to have such a suit brought by the company, he cannot maintain the present suit as a shareholder of the corporation.

This case, therefore, does not come within any of the exceptions to the rule of law that requires such suits to be brought by the corporation.

II.

There is no authority under Section 266, *of the Act of March* 3, 1911, *for the injunction in this case, nor has the Court of Equity any jurisdiction in criminal cases.*

This section of the Act of Congress, does not purport to extend the original jurisdiction of the Federal Judiciary; it does not add a jurisdiction of an independent character, or an extension of jurisdiction beyond that contained in the Judiciary Act defining the jurisdiction of the Federal Courts.

This section of the statute simply extends the authority of the Judges therein named to grant writs of injunction in pending cases. The whole assumption is, that a Federal Court has obtained proper jurisdiction of a case according to, and agreeable to, the jurisdictional definitions of the judiciary act, and that such case is pending and within the jurisdiction of the Court; and upon this assumption, it provides that the temporary injunction may be granted by the three Judges. But this statute stands in a far different predicament from one giving the Court jurisdiction of the particular case. For the proper exercise of this power under section 266, there must be a pending case in which the jurisdiction of the Court exists independently of the operation of section 266, of the Act of 1912.

We respectfully submit that this statute conferring this extraordinary power upon the Federal Judges

must have a strict construction. This is the rule of construction upon which the decision in the case of *Cumberland Telephone v. The City of Memphis*, 198 Federal Reports, 955, proceeded.

The decision in that case was by Judges Denison, McCall and Sanford. The case was a bill by the Telephone Company against the City of Memphis to restrain the execution of a city ordinance regulating telephone rates. But the Court, proceeding on the rule of strict construction, held that the law did not apply in any case except one arising directly under a statute of the State, and could not be applied to an ordinance of a municipal corporation even though the same had been adopted under a delegated power by the State Legislature.

If our contention is correct, that section 266, does not confer a new and independent jurisdiction upon the Federal Courts, then the question arises as to the Federal jurisdiction of a Court of Equity to entertain a bill to enjoin the execution of a criminal law of the State, and to enjoin the finding of indictments under criminal statutes by a State grand jury.

The general rule of equity jurisprudence is that a Court of Equity will not enjoin criminal proceedings or prosecutions.

22 *Cyc.*, 903.

The cases where the jurisdiction exists are, therefore, exceptional in their character. It is respectfully submitted that this case does not come within the exception to the rule. It is simply a case for the exercise of the police power of the State to be enforced by criminal prosecutions, and in which its violation is simply a misdemeanor against the corporation. As an illustration of the exception to the general rule, we invite the attention of the Court to the opinion of the Court in the case of *Dobbins v. Los Angeles*, 195 U. S., 23. In that case the Court sustained an injunction restraining the city of Los Angeles from removing the gas works of the complainant from their then present location under the authority claimed by the city under a municipal ordinance. There was an ordinance orig-

inally fixing the location for the gas works, and a permit was issued to this company for the location of such works within a territory fixed by the ordinance, and the works were so located and constructed. Afterwards, the city authorities extended the limits of territory where gas works were to be permitted, and provided, by an ordinance, for the removal of the gas works of the complainant from the territory. The Court held that this was arbitrary, and illegal and fraudulent in taking the property of the complainant, and accordingly the city was enjoined from removing the property of the gas works of the complainant to the extended territory.

In the case of *Southern Express Company v. Mayor of Ansley*, a decision by Judge Jones in the Northern District of Alabama, 116, Federal Reporter, 756, there was an ordinance of the city requiring license to do business from the Southern Express Company in its inter-state business. This ordinance was held, by the Court, to be invalid, and its enforcement enjoined upon the ground that a city could not exact the price of this license from a company. This case involved taking a property right. That is, the payment of a license for doing an inter-state business.

In the case of *Trust Co. v. Railroad Company*, decided in the Circuit Court of the District of Indiana, 80 Fed. Reporter, 219, there was an Act of the Legislature of Indiana fixing street railway companies' fares at not over three cents (3 cts.), and applying the Act in express terms only in cities of 100,000 inhabitants. There is only one such city in the State, and this statute was held, by the Federal Court, to be void as having been passed in violation of the Indiana Constitution, and as this affected the rates of the company, the enforcement of the law was enjoined.

In *Schandler Bottling Company v. Welch*, Judge Phillips, in the District Court of Kansas, 42 Federal Rep. 561, enjoined the execution of a State law which laid an absolute embargo on all liquors brought into the State from dealers in other States in original cases.

That law absolutely stopped the traffic of the outside liquor dealers, and Judge Phillips decided that it was a violation of the Inter-state Commerce Act of Congress, and as it absolutely prohibited the prosecution of this business, that it was within the power of the Federal Court of Equity to enjoin the enforcement of such a law.

These Federal decisions illustrate the character of exceptions by the Federal Judiciary to the general equity doctrine of the want of jurisdiction of an Equity Court in criminal matters.

This Mississippi statute is not directed against the property of this corporation. According to the statement of the bill, this company has two shifts of employees, and that would, under the operation of the law, give them a running capacity of twenty hours out of the twenty-four, and notwithstanding the exaggerated and inflated statements in the bill, as a matter of common sense, the Court must know that the regulation of this statute cannot bankrupt this corporation, or in any manner seriously impair its operation.

As the granting of an injunction is largely a matter of discretion with the Judges, I respectfully submit that the application for the injunction which was denied by the three Judges should be affirmed, and that the ordinary course of criminal jurisprudence of the State should be permitted to be administered by the State officials, especially in view of the fact that if this law is unconstitutional, a writ of error lies from the Supreme Court of the United States to the Supreme Court of Mississippi for the final decision of the question.

It is, therefore, respectfully submitted to the Honorable Court, that the decree of Judges Pardee, Grubb and Shelby, denying the injunction should be affirmed upon the following grounds, viz.:

1st. The shareholder, the complainant has no right to bring or maintain the present bill.

2nd. The granting or refusal of an application for an injunction is so largely a matter of discretion with a lower court, depending upon the circumstances of

the particular case, that its action should not ordinarily be reversed, and that only in the case of a clear and obvious error in the ruling.

3rd. The United States District Court has no jurisdiction of the case.

4th. The State statute is valid and constitutional.

III.

The Mississippi statute of 1912, *is a valid exercise of the police power of the State. The Supreme Court of the State has recently decided this law to be valid and constitutional, and that it does not offend any of the provisions of the Fourteenth Amendment, or any Federal constitutional provisions operating as limitations on the police power of the State, according to its operation and effect as construed by the State Court.*

We refer the Honorable Court to the decision of the Supreme Court of Mississippi in the Newman Lumber Company case, in which the opinion was delivered by Judge Reed, which is a very elaborate and clear exposition of the whole question involved in this opinion in respect to the validity and constitutionality of the State statute of 1912. And also to the clear and able exposition of the statute given by the Court on the reargument of that case, in an opinion delivered by Judge Cook.

At the out set; we will state that the universal constitutional rule of construction applied to the operation of the Fourteenth Amendment in respect to the powers of legislation of the States generally in this character of legislation is treated as coming under what is known as the "police power" of the State, and particularly, as in the present case, to the police power of the State as it regards the regulation of the hours of labor of employees in the State and which are commonly called, "Labor Laws."

In the second place, it has been universally held, not only by the decisions of the various State Courts that have had occasion to judicially examine this question, or doctrine, of constitutional law, but by the Su-

preme Court of the United States in its various utterances on the subject, and all of which are in entire harmony in respect to the constitutional principle of construction and interpretation involved, that it was not the purpose, or intention, of the Fourteenth Amendment to interfere with, or to impair, much less to abrogate, the power of the several States known as the "police power."

It has been announced again and again by a uniform line of Federal and State decisions on this subject, that the Fourteenth Amendment does not interfere, and that it was never intended to interfere with, or impair, the police power of the State, which is a power universally defined as one to regulate "the safety, the health, the morals, and the general welfare of the public."

This general subject has been given a most thorough and exhaustive analysis and exposition by the decision of the Supreme Court of the United States in the case of *Lochner v. New York*, 198 U. S., 45, and while that decision involved the construction and constitutionality of the Act of the New York Legislature regulating the hours for work by employees in bakeries and confectioneries, and holding that such a statute as that exceeded the limits of the police powers of the State under the Fourteenth Amendment, yet the opinion contains a most elaborate, clear and exhaustive exposition of the general constitutional question presented by this character of state legislation.

In that case, the Court expressly announced the doctrine that the Fourteenth Amendment was never intended to interfere with the proper exercise of the police power of the States to regulate the "safety, health, morals and general welfare of the public."

Upon this abstract question and construction of constitutional law, and as containing also a full exposition of this doctrine as we have just stated it to the Court, we will cite the following cases, viz.:

Mugler v. Kansas, 123 U. S., 623;
In Re Kennler, 136 U. S., 624;
Crowley v. Christenson, 137 U. S., 86.

In the case of *Holden v. Hardy*, 169 U. S., 366, involving the constitutionality of a Utah statute, the Supreme Court sustained the constitutionality of the Act. The Utah statute regulated the hours of employees in mines, smelting works and works for the reduction or refining of ores or metals. The Court said, in its opinion in *Holden v. Hardy*:

> "We think the Act in question may be sustained as a valid exercise of the police power of the State. The enactment does not propose to limit the hours of all workmen, but merely those who are employed in underground mines, or in smelting reduction or refining ores or metals. These employments when too long pursued, have been judged to be detrimental by the Legislature to the health of the employees, and so long as there are reasonable grounds for believing that this is so, its decision cannot be reversed by the Federal Courts." *Holden v. Hardy*, 169 U. S., 366-392.

This precise doctrine, on the exact point as to the test of the extent of the power of the State to regulate labor, is again stated in the case of *Gundling v. Chicago*, 177 U. S., 183, in which the Court employed still stronger terms and broader language, in the direction of sustaining the power of the States, than in other decisions. *The Court, in that case, said that the power of a State in this respect, that is to say, in the exercise of this police power, would not be condemned as invalid under the Fourteenth Amendment unless it was "so utterly unreasonable and extravagant as to amount to a mere arbitrary interference with the right to contract."*

Gundling v. Chicago, 177 U. S., 183.

In *State v. Miller*, an Oregon decision, reported in 85 Pac. 858, on the subject of the constitutionality of a State law prescribing the hours of labor for females in factories, the Court announced this rule and test for the valid exercise of the police power of the State in regard to this particular subject in the same manner, and in the identical language employed by the Supreme Court in the opinion in *Gundling v. Chicago*, 177 U. S., 183. The Court in an elaborate exposition of the po-

lice power of a State, and the extent and operation of the provisions of the Fourteenth Amendment prohibiting discriminating class legislation by the States, held the same view that had been given by the Court in the case that we have just cited, and in its opinion said, that this power of the State would be upheld as valid and constitutional in all cases unless it was "*so utterly unreasonable and extravagant as to amount to a mere arbitrary interference with the right of contract.*"

State v. Miller, 85 Pac., 856.

The same constitutional doctrine precisely was announced, and the same line of demarcation between the exercise by a State of the constitutional, and unconstitutional power in respect to the police power was drawn in the Massachusetts case of *Commonwealth v. Hamilton Manufacturing Company*, 120 Mass., 383.

So the doctrine of the Supreme Court of the United States in *Lawton v. Steele*, 152 U. S., 133, was to the effect that this class of State laws were valid and constitutional unless they were to be considered as absolutely arbitrary in their character.

The same doctrine is discussed and announced in the case of *State v. Miller*, the Oregon case above cited, which was taken to the Supreme Court of the United States by writ of error and affirmed by this Court, and reported in 208 U. S., 412.

We also refer the Court to the decision of the Supreme Court of Utah, in *Holden v. Hardy*, 14 Utah, 38, reported also in 37 L. R. A., 104.

It was said by the Supreme Court of the United States, in the case of *Lochner v. New York*, 198 U. S., 45, that "*If the Act be within the power of the State, it is valid although the judgment of the Court might be totally opposed to the enactment of such a law.*" 198 U. S., 56 and 57.

Upon an investigation of this question on this doctrine, it is seen that the constitutional doctrine and principle clearly announced by the text writers, and by all of the decisions with extraordinary and singular uniformity is, that the individual right to contract is universally held to be subordinate to the

police power of the State which is to make proper regulations within the reasonable discretion of the legislature over the subjects of the health, safety, morals, or welfare of society.

Cooley on Constitutional Limitation, 703;
Holden v. Hardy, 169 U. S., 311;
Commonwealth v. Hamilton Mfg. Co., 120, Mass., 383;
Ex Parte Kuback, 85 Cal., 274;
Frazier v. People, 141 Ill., 171;
State v. Lumis, 115 Mo., 307;
Law v. Printing Co., 41 Neb., 227;
Seattle v. Smythe, 22 Wash., 327.

It is also a doctrine of constitutional law of universal acceptance, that a large and wide discretionary power must be left to the Legislature of the several States in regard to the exercise of the police power. Among the many decisions which have ably discussed and presented this question, are:

Lawton v. State, 152 U. S., 133;
Jackson v. Mass., 197 U. S., 11;
In Re Boyce, 75 Pa., 1;
(s. c. 65 L. R. A., 47);
State v. Buchanan, 70 Penn, 52.

The attention of the Court is again called to the decision of the Utah Supreme Court in *State v. Holden*, 14 Utah, 38 (s. c., L. R. A., 104). The Court in that case has treated the subject very clearly and comprehensively, especially the Court was very clear in the announcement of the doctrine that this whole matter of the police power of the State, directed as it is to the making of regulations for the safety, health, comfort and general welfare of the public, is one to be construed in the broadest and most liberal manner; that the adaptation of legislative means for the accomplishment of these objects is largely left to the discretion and judgment of the Legislature; that no constitutional limitation in the Fourteenth Amendment can either destroy, or impair, the efficacy and potency of this legislative power which is inherent in

the State, and which belonged to the State at the adoption of the Fourteenth Amendment, and which are to remain intact and untouched by the provisions of that Amendment.

This is the rule of constitutional law that has been recognized and adopted by every decision of the State Courts, and every decison of the Supreme Court of the United States that has dealt with the subject.

In *State v. Holden*, the Utah Supreme Court held, in the case of a State statute which regulated the time of labor in mines and smelter establishments, that in such a case, the Court would not be authorized to hold such a labor law as not calculated to promote the health and safety of persons working in mines and smelters. The Court said expressly that to do so would be to usurp legislative power by the Court which is entrusted by our constitutional law exclusively to the Legislature.

In the case involving the precise question as to the test of the full extent of the legislative police power of the State under the operation of the Fourteenth Amendment, the principle is that no State law passed in pursuance of the police power of a State will be declared invalid and unconstitutional unless it is a plain, clear usurpation of, or arbitrary exercise of this police power.

In *Lochner v. New York*, 198, U. S., which has been cited in this brief, the Court used the following language on this precise question as to the test of the extent of this police power of the States, under the operation of the Fourteenth Amendment;

> "*The sole test is whether the exercise of this power is fair and reasonable, or an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty to enter into contracts in relation to labor.*"
>
> *Lochner v. New York*, 198 U. S., 45 and 56.

The Court further said in its opinion:

> "*If the Act be within the power of the State, it is valid although the judgment of the Court may be totally opposed to the enactment of such a law.*"
>
> *Ibid*, 56-57.

And again, in *Gundling v. Chicago*, 177 U. S., 183, the Court was even more emphatic in its enunciation of the test of the extent of the power of the States in this respect. The Court in that case said that the exercise of this police power by the States would be treated as valid unless it was "*so utterly unreasonable and extravagant as to amount to a mere arbitrary interference with the right to contract.*"

Gundling v. Chicago, 177 U. S., 183.

And again in the case of *State v. Miller*, decided by the Supreme Court of Oregon, 85 Pac., 855, the Oregon Supreme Court announced the full extent of this limitation on the police power of the State in identically the same language that was used by the Supreme Court in the case of *Gundling v. Chicago.*

State v. Miller, 85 Pa., 855.

So that the whole question resolves itself into this, as the test of the constitutional limitation imposed by the Fourteenth Amendment on the police power of the State, that the exercise of this power over this whole field of legislation involving the safety, the health, the morals, and the general welfare of the public, is to be *upheld and sustained in all cases except where there is a clear, obvious and arbitrary misuse of this power. It is so largely and comprehensively a subject that is left to the domain and field of State legislation that it would be impossible to prescribe a rule of constitutional limitation that would be any less broad and liberal than the one announced by the Courts.*

This Court said in *Lochner v. New York*, 198 U. S., that it must be conceded that there is a limit to the valid exercise of the police power of the State, "otherwise any claim to such legislation would be valid no matter how absolutely without foundation the claim might be."

Lochner v. New York, 198 U. S., 55.

It is clearly a correct proposition of constitutional law, that there must be some limit placed on the exercise of the police power of the State. If we consider this question upon general constitutional principles, and

a priori, we will see, at once, that this police power of the State originally, and before the adoption of the Fourteenth Amendment, was not a power *absolutely unlimited and arbitrary in its character.* Before the Fourteenth Amendment was ever heard of, no State had the power inherently, according to the very theory and fundamental frame-work of our form of government, to use the police power of the State as an *absolute, unconditional, unlimited, and arbitrary legislative power.* From the very beginning and origin of the government, and the creation of the states, this police power of the states was hedged in with certain inalienable personal and private and individual rights of a citizen that could not be destroyed and impaired by an *unreasonable, arbitrary and autocratic exercise* by the Legislature of the police power of the State, under the guise and form and pretense of exercising this police power for the safety, and welfare of society. There have always been certain fundamental rights of the private citizen of which he could not be deprived by the exercise of this particular police power by the Legislature of the several States.

So that it is submitted to the Court upon an *a priori* view and analysis of this whole question comprehensively considered according to the exposition of the limitation and operation of the Fourteenth Amendment by the Courts of the country, both State and Federal, that, as a practical proposition, the Fourteenth Amendment has had little or no operation in placing any substantial limitations whatever on this police power of the States that did not exist prior to the adoption of this Amendment to the Federal Constitution.

The operation of this Amendment does not impair the discretionary power of the Legislature in legislating on this particular subject to any reasonable extent in addition to the inherent limitation already pre-existing on this legislative power or authority, except that it prohibits the States from enacting discriminating class legislation, and this constitutional limitation imposed by this Amendment relates not alone to the police power of the State, but it is much

broader in its operation, and relates and applies to any and all State legislation which may be characterized as unjust and harmful discriminating class legislation. It is difficult to perceive a single subject of State legislation affecting the safety, health and general welfare of a State where, upon any reasonable or rational basis or theory the particular legislation could be said to be a regulation that was not arbitrary, unreasonable or repressive, that would not stand the test of the limitations imposed by the Fourteenth Amendment upon the police power of the State.

This Court, in the abundance of its judicial conservatism and in its conservative consideration for the sovereign rights of the States, and the fundamental principles underlying our dual form of government, has expressly held in regard to the operation of the Fourteenth Amendment as it relates to the police power of the State, that the Fourteenth Amendment was never intended to impair the force of this police power of the States except in cases "*so utterly unreasonable and extravagant as to amount to a mere arbitrary interference with the right to contract.*"

We have not found in our examination of this subject any decision of this Court in point in respect to the present inquiry, where a State law passed in the exercise of the police power has been declared invalid by the Supreme Court except in the case of *Lochner v. New York*, 198 U. S., 45. That case involved the validity of a general New York statute on the general subject of regulating labor in various avocations and providing for sanitaty conditions in the same.

Section 110, of the New York statute in regulating labor applied expressly to the hours of labor for employees in a bakery and a confectionery establishment. In that case, the Supreme Court of New York, by a divided Court, held the law to be constitutional. In the appellate division of the Appellate Court of that State, the law was upheld by a divided Court. The Supreme Court of the United States held by a majority of the Court that in no possible view of this statute could it be sustained on the ground of a regulation for the safety, health, or welfare of the public; that the

occupation of a baker or a confectioner was positively and inherently as safe and as healthy as any other avocation,—that of a lawyer, of a broker, or a bookkeeper, or any other occupation, and that while this statute purported to be a regulation under the police power of the State, it was in reality and in substance, an unreasonable and arbitrary exercise of this police power, and that its operation was unreasonable and was a mere arbitrary interference with the private right of the citizen.

It is respectfully insisted to the Court, that where there is the least margin to justify the exercise of this power by the Legislature, it becomes simply a question of judgment between the Court and the Legislature as to the propriety and reasonableness and adaptation of the legislative means, and that the Courts cannot usurp the legislative function and sit in judgment upon the discretionary power in this respect which is vested in the Legislature.

It may be an unwise law, it may be a hard law, and it may be a law whose practical application is ineffective, but if it falls short of the test of being a purely arbitrary and unreasonable exercise of power by the Legislature, then such legislation must stand, and will stand the test of the constitutional limitations contained in the Fourteenth Amendment as well as any other limitations placed on this police power of the States.

With this cardinal doctrine of constitutional law thus defined and circumscribed by the decisions of the Court, we may now proceed to an application of this doctrine of constitutional law to the particular statute now under consideration.

This statute does not operate upon, nor was it intended to affect in any manner or to apply to any corporations or persons engaged in any other occupation, or avocation, except the business of manufacturing. It is provided by the statute that no person, firm or corporation engaged in manufacturing or repairing shall work their employees more than ten hours per day except in cases of emergency or where public necessity requires in such departments. In a

word, the statute applies solely and exclusively, to manufacturing establishments. According to the meaning and signification of the term, "manufacturers" or "manufacturing," the use of machinery is implied. A person who makes shoes by hand, for illustration, is a shoemaker and not a manufacturer. A man who repairs shoes is not a shoemaker, much less a manufacturer, but a cobbler. A blacksmith who makes horse shoes is a blacksmith, and not a manufacturer. And so we can readily understand the distinctions which run all through these different business employments. A person or corporation that has an establishment equipped with machinery by which shoes are manufactured, or any other atricle is manufactured by machinery, is a manufacturer; he is engaged in the business of manufacturing.

And so a lumber company or an oil mill with its machinery for a saw mill or oil plant, is in this sense, a manufacturer of lumber or oil. But a man who makes brooms by hand is not a manufacturer, while a man who has a lot of machinery, and manufactures brooms by machinery, is classed as a manufacturer. So that a correct interpretation, judicially, and according to the common sense and general acceptance of the terms employed by this statute, it must be assumed, and presumed, conclusively, that the statute was intended to operate exclusively in respect to firms and corporations or persons engaged in manufacturing, a business which necessarily implies and carries with it the idea of a plant consisting of the necessary machinery for carrying on the particular work of the establishment and a corps of organized laborers or operatives. Such is the meaning, application and effect given to the Mississippi statute by the Supreme Court of the State, as purely a matter of statutory construction. It is a fact of universal acceptance, not only by the Courts but in the common acceptance of the term in all the affairs of human life that the use of machinery in manufacturing plants is necessarily more or less dangerous and hazardous to human life and safety. This is true, and of general, if not of universal acceptance. A lumber company is equipped

with steam boilers, engines and machinery for sawing out the lumber, planing mill machinery for planing, and dressing the lumber, and the use of this machinery is obviously and undeniably more or less connected with danger to the employees of such an establishment. An oil and refining plant for the manufacture of cotton seed oil, and its by-products, with its complicated machinery and products, is obviously to be classed with the concerns coming within the operation of this statute.

The interpretation placed upon the State statute, and the extent of its application to manufacturing establishments is elaborately presented, in clear and explicit terms in the original opinion of the State Court, delivered by Judge Reed in the Newman Lumber Co. case. And in the second opinion of the State Court, delivered by Judge Cook, on the re-argument, the whole subject is reviewed with great accuracy and precision, and the operation of the statute is limited to manufacturing establishments and to the meaning as of this term as understood in its present ordinary meaning and acceptance. These opinions are clear, lucid, and able in the reasoning employed in the construction of the statute, and contain a complete demonstration of the correctness of the conclusions reached in the questions presented in that case, which are:

1st. The construction and interpretation of the statute, and,

2nd. The constitutionality and validity of the statute.

It is submitted, therefore, confidently, to the Court, as a correct proposition of constitutional law, sustained by all the authorities to which we have referred this Honorable Court, that in a case of this character, the courts of the country cannot substitute their judgment for that of the Legislature. It is respectfully insisted also to the Court in accordance with the authorities cited and which contain an announcement of the correct American constitutional law on this subject, that this law cannot be characterized by the courts as an unwarranted, unreasonable, or arbitrary exercise of this

discretion which has been vested by the Constitution in the Legislature of the State. When once it is admitted or conceded that there is a reasonable ground, or basis, or margin for fair and reasonable contention in respect to the propriety of the legislation it becomes at once apparent that the legislative discretion must dominate and control, and must be recognized by the Court as exclusive of the power in the Court to review such legislative discretionary power and substitute its own judgment for that of the Legislature. It is perfectly evident, and stands beyond controversy, that the judgment of the Court cannot be invoked for the purpose of supplanting the judgment and discretion which is vested exclusively in the Legislature and this legislative power and discretion extends to the whole subject, and everything is to be conceded to the Legislature in regard to this discretionary power except in those extreme and exceptional cases where the Act in question is so unreasonable as to amount to an arbitrary assumption of authority by the Legislature exercised, in such case, under the false pretense of shielding itself behind the plea of the police power of the State.

A decent regard and respect for the legislative department of the government, a co-odinate department of the State government, by the courts involves necessarily a large margin of deference by the courts to the exercise of discretionary power in this respect by the Legislature. If there can be any doubt entertained, whatever, in regard to the validity and constitutionality of a statute on this subject, the doubt must be resolved by the courts in favor of the validity of the law.

If there is a debatable margin on the question of the propriety of the discretionary exercise of this power by the Legislature, the Court cannot undertake to substitute its judgment in the premises for that of the Legislature.

Upon a final analysis of the whole question, and upon a refinement of the inquiry down to the precise point involved in this case and presented for decision, it is perfectly clear, we respectfully submit, as a matter

of constitutional law, that the Court cannot enter the province or the field of legislative action in this matter and abrogate the action of a state legislature, unless it is in a case where the legislature has exercised this power *unreasonably and arbitrarily, and where, in fact, the Legislature has itself clearly exceeded the bounds of its authority and usurped a power that it did not constitutionally possess.*

In regard to the word, "repairing," that is used in this Act of the Legislature, it is perfectly clear, on the decison of the State Court, and on the elementary principles of statutory construction, that the word, "repairing," found, as it is, associated with the word, "manufacturing," must necessarily have the same meaning and application, and will, therefore, apply, in the language of the law, to any person, firm or corporation engaged in manufacturing or repairing, meaning thereby, engaged in manufacturing establishments where articles are either manufactured or repaired. For illustration, take the case of a foundry and machine shop where repair work is done by machinery. That necessarily would fall in the same category as a manufacturing establishment, and that is what is meant by the statute by the use of the words, "or repairing." That is the meaning and effect of the statute as construed by the Supreme Court of the State in the *Newman Lumber Company* case.

We have not cited any authorities on this question of the meaning of the terms employed by the statute. The whole subject of construction is one of familiar law, and it is only necessary to invite the attention of the Court to this particular rule of construction, and to the opinions of the Supreme Court of the State in the case of the *Newman Lumber Company*.

Upon these considerations we respectfully submit, that the law is valid and constitutional, and should be upheld by the Court.

The objection that this Act violates the State constitutional guaranty in regard to the obligation of contracts is not a valid or a sound objection. There are two complete and comprehensive answers to this. The doctrine is of universal acceptance that contract-

ual rights are subordinate to the exercise of the police power of the legislature of the state, which is the power of the legislature to legislate in regard to the health, safety, morals and welfare of society. This is dogmatically true as a proposition of American constitutional law. This rule is announced by Judge Cooley in his work on Constitutional Limitations, page 708. It has been affirmed clearly and distinctly by the Supreme Court of the United States in the case of *Hardy v. Holden*, 169 U. S., 391, and given a very clear and lucid exposition in the opinion of the Court in that case. This Court said in *Crawley v. Christendon*, 137 U. S., 86, in speaking of the personal rights of a citizen:

> "The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the county essential to the safety, health, peace, good order, and morals of the community." 137 U. S., 86.

It has been expressly decided by this Court that the right to contract was not absolute, but may be subjected to the restraints demanded by the safety and welfare of the State, in many cases, among which are the following:

St. Louis I. M. and S. R. R. Co, v. Paul., 173 U. S., 404, 409.

Knoxville Iron Co. v. Harbinn, 183 U. S., 13, 21, 22.

It may confidently be affirmed that this is a constitutional doctrine of universal acceptance by the American Courts, both State and Federal.

To give a broad illustration of this constitutional rule, or principle, we may take the case of private citizens who enter into a lottery contract, or a smuggling contract, or a liquor selling contract, in which cases it could never be contended that the legislature, in legislating for the good morals and the welfare of society, could not place the ban of illegality upon these avocations, and when the legislature did enact such legislation, the contracts would stand as illegal and annulled. The idea would not be tolerated by the Court for an instant, that these contractual obligations

are protected by the constitutional guaranty, and that this character of contractual right, so called, stood above the police power of the Legislature to make regulations for the morals and general welfare of the people of a State.

The Decision in Re Parte Young (209 U. S., 125).

This case relied upon by the appellants' counsel is not an authority in point on the motion for an injunction in the present case.

1. That was a proceeding by writ of *habeas corpus* by Edward T. Young, Attorney General of Minnesota, who had been arrested for contempt of the Minnesota U. S. District Court in violating an injunction restraining him from enforcing a Minnesota statute.

2. The Minnesota statute fixed railroad rates at two cents per mile.

There was a penalty against the railroad officials personally by imprisonment.

3. The original suit involved the power of the State to fix railroad rates and was by two stockholders and a foreign railroad company enjoining said statute. The proceedings in the original suit were brought into view collaterally in the *habeas corpus* case.

The fact of a Federal question without regard to its intrinsic merit, was, therefore, only involved.

4. The statute made its violation in such instance a felony against the officials personally, and a fine each day of $5,000.00 against the corporations. The sale of each ticket was a separate offense.

5. It was held that it was impossible for the company to carry on business, or to try the case in the ordinary way.

6. The Federal Court had the power to decide whether the rates were *confiscatory*, and the State statute, arbitrary, unjust and unreasonable, and, therefore, a usurpation of legislative authority.

7. The cases cited in *Ex Parte Young*, apply to direct attacks upon property rights.

8. The basis of the whole decision is that the State law was confiscatory and arbitrary and unjust, and was an usurpation of legislative authority; that its penalties were so heavy and excessive as to cast the Company off from all remedies in the courts in the ordinary way.

9. Especial stress was laid upon the fact by the Court that the State law absolutely prevented the railroad companies from carrying on their business because of the impossibility of getting employees who were to be punished by such heavy fines and terms of imprisonment.

The Construction of a Local Statute.

The decision of a State Court construing a local statute in respect to its meaning, operation and effect is binding on the Federal Courts in determining the question of the constitutionality of the statute.

In testing the validity, therefore, of a State statute under the Federal Constitution, the local statute must be taken and decided on the question of its constitutionality, *according to the interpretation, effect and operation of such statute given to it by the Supreme Court of the State.*

The decision of the State Court in determining the meaning and operation of a statute is taken by the Federal Judiciary as a part of the statute itself, for the statute can only have the operation and effect given to it, upon its construction, by the State Court.

The constitutionality of a State statute must, therefore, be decided by the Federal Court, precisely as if the statute was written according to the construction placed upon it by the State Court. The statute thus construed by the State Court is the precise State action the constitutionality of which is to be decided by the Federal Courts.

The statute now before the Court, upon the question of its constitutionality, we respectfully submit to the Court, as construed and limited in its operation and effect by the Supreme Court of the State, is not in violation of any provisions of the Federal

Constitution, and is a proper and valid exercise of the police power of the Legislature of the State of Mississippi.

We, therefore, respectfully submit to the Court that the decree of the Judges denying the motion for an injunction should be affirmed.

ROSS A. COLLINS,
ATTORNEY GENERAL OF MISSISSIPPI.

FRANK JOHNSTON,
ASSISTANT ATTORNEY GENERAL OF MISSISSIPPI.

the right of a stockholder of a corporation to enjoin the corporation from complying with those provisions, are stated in the opinion.

Mr. Marcellus Green and *Mr. Garner Wynn Green* for appellant:

Chapter 157, Laws of Mississippi, 1912, unconstitutionally restrains the liberty of contract. Undue elevation of state police power at the expense of private constitutional right is a fundamental error. The State is without power to prohibit the making of a purely personal contract. *Lochner* v. *New York*, 198 U. S. 45; *Adair* v. *United States*, 208 U. S. 161; *Muller* v. *Oregon*, 208 U. S. 412; *Chicago &c. R. R.* v. *McGuire*, 219 U. S. 565; *Allegeyer* v. *Louisiana*, 165 U. S. 578; *Smith* v. *Texas*, 233 U. S. 630; *Riley* v. *Massachusetts*, 232 U. S. 671; *Sturges* v. *Beauchamp*, 231 U. S. 320; *Central Lumber Co.* v. *State*, 226 U. S. 157; *Rosenthal* v. *People*, 226 U. S. 260; *Schmidinger* v. *Chicago*, 226 U. S. 578; *Eubank* v. *Richmond*, 226 U. S. 370; *Chicago &c. Ry.* v. *Hackett*, 228 U. S. 559.

Gundling v. *Chicago*, 177 U. S. 183, and *Holden* v. *Hardy*, 169 U. S. 366, rightly hold that protection of the health and morals, as well as the lives, of citizens, is within the police power of the state legislature, but those cases are inapplicable here. And see *Buckeye Oil Co.* v. *State*, 60 So. Rep. 776.

The business of a cotton oil mill has not that which brought the law of New York into favor with the minority opinion of this court in *Lochner* v. *New York*, *supra*. This statute is purely a labor law and not a health measure. And see *Ex parte Fred Martin*, 26 L. R. A. (N. S.) 246.

In determining whether an act, limiting the hours of labor in any occupation, is in violation of the provisions of the Federal Constitution, the primary consideration is whether or not the occupation possesses such characteristics of danger to the health of those engaged in it

as to justify the legislature in concluding that the welfare of the community demands a restriction. *New York* v. *Williams*, 12 L. R. A. (N. S.) 1130.

This act attempts to legislate upon a subject over which the State is without power. See *Milsicek* v. *State*, 225 Missouri, 561; *People* v. *Williams*, 189 N. Y. 131; *S. C.*, 116 App. Div. 397; *In re Ten Hour Law*, 24 R. I. 603; *Eight Hour Bill*, 21 Colorado, 29; *Low* v. *Reese Printing Co.*, 41 Nebraska, 454; *Wheeling Bridge Co.* v. *Gilmore*, 8 Ohio C. C. 658.

The act arbitrarily classifies manufacturers and repairers, without regard to health or hazard, excluding from its operation persons and corporations whose employés perform services of identical character, and so violates the Federal Constitution. *Hing* v. *Crowley*, 113 U. S. 709; *Gulf &c. R. R.* v. *Ellis*, 165 U. S. 159; *Magoun* v. *Illinois Trust Co.*, 170 U. S. 283.

The act violates the Federal Constitution, in that, in the fines imposed and obedience thereby obtained, it is confiscatory. *Ex parte Young*, 209 U. S. 123, 163; *Dobbins* v. *Los Angeles*, 195 U. S. 223, 241.

Where property rights will be destroyed, unlawful interference by criminal proceedings under a void law or ordinance may be reached and controlled by a decree of a court of equity. *Smyth* v. *Ames*, 169 U. S. 466.

Mr. Frank Johnston and *Mr. Ross A. Collins*, Attorney General of the State of Mississippi, for appellees:

The complainant, a shareholder in the Jackson Oil & Refining Company, has no right to file, or maintain, the bill in this case. The United States court at Jackson has no jurisdiction of the case.

Section 266, Judicial Code, does not extend the jurisdiction of the Federal courts, but only gives authority for the issuance of injunctions in already pending cases in the mode and manner prescribed in this statute, and where the

jurisdiction exists in a Federal court. And a court of equity, neither state nor Federal, has any criminal jurisdiction, and the Federal court of equity having no jurisdiction in respect to criminal cases, § 266 does not apply to injunctions in such cases.

The Mississippi statute of 1912, regulating the hours of labor in the State in manufacturing establishments, is valid and constitutional.

MR. JUSTICE HUGHES delivered the opinion of the court.

The appellant brought this suit in the District Court to restrain the Jackson Oil & Refining Company, its manager and officers, from complying with a statute of Mississippi prohibiting employment in described occupations for more than ten hours a day, except in cases of emergency or public necessity (Chapter 157, Laws of Mississippi, 1912, p. 165) and to enjoin the other defendants (certain public officers) from enforcing its provisions as against that company.

It was alleged in the bill, in substance, that the defendant corporation was engaged in operating a cotton seed oil mill of the value of $100,000; that the complainant owned five hundred and two shares of its stock of the par value of one hundred dollars each and of the actual value of $60,000; that the business required that the mill should be operated continuously, both day and night, two shifts of laborers being employed; that the employment was under wholesome conditions, without any detriment to the physical, mental and moral well-being of those employed; that the statute, if enforced, would work a deprivation of liberty of contract and of property, and an arbitrary discrimination, contrary to the Fourteenth Amendment; that compliance with the statute would involve greatly increased cost of operation and render the corporation insolvent and its property valueless, to the

complainant's injury; that the statute had been sustained by the Supreme Court of Mississippi in a suit against another manufacturing company; that, although the officers of the defendant corporation desired to disobey the statute, they were complying therewith being constrained to obedience through fear of the enormous penalties imposed; and that these penalties were so severe that no owner or operator in the position of the defendant corporation could invoke the jurisdiction of a court to test the validity of the statute, except at the risk of confiscation.

Those defendants who were public officers demurred to the bill upon the grounds (among others) that the complainant as a stockholder of the corporation had no right to sue; that the bill could not be maintained to restrain the enforcement of the criminal law of the State; and that the statute was constitutional.

An application for a preliminary injunction was heard on the bill and demurrer and was denied, and from the order entered to this effect the complainant appeals to this court. Judicial Code, § 266.

The objection urged below, and repeated here, that the complainant has failed to show any right to maintain this suit must be sustained. The right of action to restrain the enforcement of the statute as an unconstitutional deprivation of the liberty and property of the corporation was a right existing in the corporation itself, and a stockholder was not entitled to sue without showing to the satisfaction of the court that he had exhausted the means within his reach to obtain action by the corporation in conformity with his wishes. *Hawes* v. *Oakland*, 104 U. S. 450, 460, 461; *Detroit* v. *Dean*, 106 U. S. 537, 541, 542; *Quincy* v. *Steel*, 120 U. S. 241, 248; *Doctor* v. *Harrington*, 196 U. S. 579, 588. The former equity rule (Rule 94, 210 U. S. 541) provided not only that the bill must allege that the suit was 'not a collusive one to confer upon a